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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/993,933	11/06/2001	Diane Jones	026032-3670	5497

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EXAMINER	
NELSON JR, MILTON	

ART UNIT	PAPER NUMBER
3636	

DATE MAILED: 04/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No.	Applicant(s)	
	09/993,933	JONES ET AL.	
	Examiner	Art Unit	
	Milton Nelson, Jr.	3636	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 01 March 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

a) ☐ The period for reply expires _____months from the mailing date of the final rejection.

b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.

2. ☐ The proposed amendment(s) will not be entered because:

   (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);

   (b) ☐ they raise the issue of new matter (see Note below);

   (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): 35 USC 112, 2nd Paragraph rejection of claim 37.

4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5. ☒ The a)☐ affidavit, b)☐ exhibit, or c)☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: *See Continuation Sheet*.

6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7. ☐ For purposes of Appeal, the proposed amendment(s) a)☐ will not be entered or b)☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: _____.

   Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a)☐ approved or b)☐ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement(s)(PTO-1449) Paper No(s). _____.

10. ☐ Other: _____

Milton Nelson, Jr.
Primary Examiner
Art Unit: 3636

Continuation of 5. does NOT place the application in condition for allowance because:
Regarding the restriction requirement, the non-electedInventions I (seat) and II (fabric cover) are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the subcombination requires at least that the suspension fabric cover be in the shape of a seat cover, or that the seat cover be configured to be usable with a plurality of seat frames of different configuration, or that the seat cover comprises a plurality of yarns of different textures and a plurality of yarns of different colors. The subcombination has separate utlity such as use as a blanket or floor mat. These inventions are distinct for the reasons given above and have acquired a separate status in the art as recognized by their requiring different classification. These inventions are distinct for the reasons given above and the search required for Group 1 is not required for Group 2. These inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, therefore restriction for examination purposes as indicated is proper.The subcombination has separate utility such as use as a blanket or floor mat. Since applicant has received an action on the merits for the originally presented invention (seat), this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 10-26 and 40 remain withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Regarding the 35 USC 112 1st Paragraph rejection, the specification does not support the limitation that the shrink yarn is selected such that the double jersey knit cover is sufficiently taut to support an occupant "only" after shrinking the shrink yarn. This limitation represents new matter. Applicant indicates support is provided in paragraphs 0013, 0022, and 0023 of the specification, however this limitation appears not to be supported there. The rejection has been maintained.

Regarding application of Brooks et al and Lee et al to claims 1, 4, 27-37 and 39, and 1, 4, and 27-39, respectively, under 35 USC 102, Applicant argues that neither shows a suspension fabric. Both show covers that are suspended from the top surface of a seat frame. These covers are also capable of being suspended from a seat frame. It is noted that Applicant has not claimed the cover as being suspended, but merely claims the cover as a suspension cover. These rejections have been maintained.

Regarding application of Brooks et al and Lee et al to claims 2 and 5, as modified in view of Girard et al, under 35 USC 103, Applicant argues that none of this prior art shows a suspension fabric. Each shows a cover that is suspended from the top surface of a seat frame. These covers are also capable of being suspended from a seat frame. It is noted that Applcant has not claimed the cover as being suspended, but merely claims the cover as a suspension cover. Additionally, has directed a piecemeal analysis to the prior art. The secondary references are described as teaching the subject matter indicated in the rejections, and not the subject matter indicated as taught by the primary references. These rejections have been maintained. Similarly note application of Brooks et al and Lee et al to claims 3 and 6, as modified in view of Blake.

Applicant further argues that the invention of claim 1 is not an obvious variation of Brooks et al, Girard et al, Blake, or any combination of these references, however no rejection based on obviousness has been applied against claim 1. This argument appears moot.